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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 287

CAMILLE V. TREIGLE, *Appellant*, v. ACME HOMESTEAD ASSOCIATION, *Appellee*.

No. 288

CAMILLE V. TREIGLE, *Appellant*, v. THRIFT HOMESTEAD ASSOCIATION, *Appellee*.

No. 289

TREIGLE SASH FACTORY, INC., *Appellant*, v. CONSERVATIVE HOMESTEAD ASSOCIATION, *Appellee*.

No. 290

TREIGLE SASH FACTORY, INC., *Appellant*, v. UNION HOMESTEAD ASSOCIATION, *Appellee*.

No. 316

JOSEPH MITCHELL, *Appellant*, v. CONSERVATIVE HOMESTEAD ASSOCIATION, *Appellee*.

APPEALS FROM THE SUPREME COURT OF LOUISIANA.

BRIEF ON BEHALF OF THE UNITED STATES BUILDING AND LOAN LEAGUE AS AMICUS CURIAE.

C. CLINTON JAMES,
Attorney for the United States Building and Loan League.

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STATEMENT.

The United States Building and Loan League is a national organization whose membership is composed of the

State Leagues of forty-eight (48) states and Hawaii and 4,257 individual associations, representing about 75 per cent of the total assets of the Building and Loan Associations in the United States.

According to the latest statistics contained in the Report of H. F. Cellarius, Secretary-Treasurer of the United States Building and Loan League, there are 10,920 associations, with 8,370,146 members and $6,450,424,392.00 in assets. (See Table I, Summary Table of Number of Associations, Total Membership and Total Assets of Building and Loan Associations, By States, 1934; and Table II, Mortgage Investments of Building and Loan Associations, 1933-1934.) These Tables are reproduced in the Appendix page 1.

The appellants attack certain sections (53, 54, 55 and 56) of Act 140 of 1932 (the Louisiana Building and Loan Code), on the ground of impairment of contract and deprivation of property without due process of law. The sections under attack change the time and method of payment of withdrawals in Louisiana associations.

This brief, filed as *amicus curiae,* is presented because a determination of the question here under consideration will affect the interests of the building and loan associations located in twenty states, which have enacted statutes affecting withdrawals from building and loan associations since the year 1930. In addition, substantial changes have been made, since that year, in the laws of fourteen other states. (See pages 11 to 23, Appendix of Brief on Behalf of Appellees.)

For a statement of the essential facts, the Court is respectfully referred to the Statement contained in appellants' Brief, pages 1 to 4.

OPINIONS BELOW.

The opinions of the Supreme Court of the State of Louisiana in these cases are reported in 181 La., pages 941, 971, 972, 973, 974.

STATUTES INVOLVED.

Act 140 of 1932 (Louisiana Laws, 1932, page 454), Sections 53, 54, 55 and 56, as set out in the Appendix of Appellants' Brief (pages 5 to 9).

QUESTION PRESENTED.

The only question presented on these appeals is whether Sections 53, 54, 55 and 56 of Act 140 of 1932, are unconstitutional.

Appellants' contention is that the provisions of these Sections, which change the method of paying demands of withdrawing shareholders in building and loan associations and which amend some of the administrative features previously existing as to moneys to be used for withdrawals, declaration of dividends, etc., impair the obligations of contracts, divest said withdrawing shareholders of alleged vested rights and are, therefore, violative of Section 10 of Article 1 of the Constitution of the United States and Section 1 of the Fourteenth Amendment.

Appellants deny that the State of Louisiana has the right to formulate any new rules as to withdrawal privileges, etc., although they concede the quasi-public character of these institutions and the resultant power of state control and supervision.

The Supreme Court of Louisiana, in what we believe to be a notable statement of the principles for which the United States Building and Loan League has contended for many years, has approved the Louisiana legislation of 1932 as a proper exercise of the paramount police power of the state, and has decided that the arm and power of the state in the supervision and control of these institutions cannot be stayed by the claims of individual shareholders that their preexisting rights and relationships in these associations will be incidentally affected and modified.

ARGUMENT.

It cannot be seriously argued that plaintiffs' rights were contractual.

No one can, by a conventional agreement, acquire a membership in a building and loan association. The relationship between a building and loan association and the members thereof is authorized and fixed by statute and cannot exist without a statute. Since this membership is wholly statutory, it can be changed at the will of the Legislature.

We particularly call the Court's attention to appellees' authorities on this point. See Appellees' Brief, Point IV, page 32. To hold that a member's subscription is contractual would make it necessary for this Court to overrule the very important case in the Supreme Court of Louisiana, *Conservative Homestead Association* v. *Dreyfous,* 175 La. 404. See Appellees' Brief, page 33. And we respectfully state that we hardly see how this Court could undertake to overrule, or even to disregard, this decision, since that case presents an authoritative interpretation and statement, by the Supreme Court of Louisiana, of the essentially statutory character of the rights of shareholders in building and loan associations in that State;—the interpretation of that state statute, by the highest court in that state, under the established jurisprudence of this Court, being binding here. *Louisville Gas & Electric Company* v. *Coleman,* 277 U. S. 32, 36; *Merchants' Bank* v. *Pennsylvania,* 167 U. S. 461, 462.

The Louisiana Legislature, in reference to the attribution of funds for withdrawals from associations, had originally left the matter to the discretion of the respective boards of directors, by the Louisiana statute of 1902; changed the rule on this subject in 1916; and goes back, in the 1932 Statute, to the original rule. See Appellees' Brief, pages 28 to 32.

Indeed, it would appear that the amendments in that regard and in the related matters complained of by appellants, amount to no more than purely administrative changes in

the rules for the government of these associations,—a matter surely within the power of the Legislature in the exercise of its duty of supervision and control of these quasi-public institutions, and with the wisdom of which this Court is not concerned.

As to the new method of payment of withdrawals, it does not represent a new and untried plan. The Louisiana statute brings to the building and loan shareholders of that state the benefit of legislation in other states substantially to the same effect and which has given general satisfaction. Similar statutes, changing the preexisting withdrawal rights of members in building and loan associations, have been adopted in the states of Alabama, California, Colorado, Florida, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Washington and West Virginia. See Appellees' Brief, Appendix, pages 11 to 23.

As in these other states, the Louisiana statute does not prevent or hamper, but on the contrary promotes, the right of withdrawal by liberalizing and extending the benefit of the withdrawal payments to a larger number of shareholders. The changes made relate substantially only to the time and method of payment, and the right of withdrawal is at all times furthered and protected.

We have no intention of repeating the comprehensive argument presented by the appellees herein. With that argument we agree; and we consider that there is no answer whatever, either to that part of the appellees' brief which deals with the statutory nature of the relationship between a member and his association (Appellees' Brief, page 32, Point IV.), or to the proposition that a building and loan association, like a bank, is a quasi-public institution, at all times subject to control of the Legislature through the police power (Appellees' Brief, page 6, Point I.).

It seems to us that the recognition of the power of the Legislature to meet, by adequate legislation, the needs of

building and loan associations and of their shareholders as new conditions arise in the future, is as essential to the future welfare of these associations, as is the recognition of the same doctrine of wise and continuing supervision and control for the growth, improvement and safety of commercial and savings banks.

We call the Court's attention to the fact that, if the appellants should prevail, it may mean the end of the legislative control and supervision of these quasi-public institutions; for, if the existing shareholder, either in a bank or in a building and loan association, has a so-called contract right which is beyond legislative control, then the Legislature is, for all time, powerless to bring about any change, no matter how desirable or necessary, if the same has the effect of modifying in any respect the rights of said shareholders,—a doctrine which may mean the end of all regulation and control of these institutions, creating a situation which this Court has characterized as "inconceivable". *Louisville and Nashville Company* v. *Mottley,* 219 U. S. 467, Appellees' Brief, page 17.

Building and loan associations, with their tremendous importance as promoters of thrift, their wide distribution over this country as the out-standing medium for the building and financing of homes, are reservoirs of billions of dollars, representing the savings of the poor homesteader and homeowner, and are no less public in character and subject to legislative control and supervision, than are insurance companies, railroads, commercial and savings banks and public utilities generally.

No one has ever thought that even a contract creditor of any of these institutions could prevent the exercise by the state of the paramount power of regulation. As stated by this Court, in the Mottley case, "contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract", or any shareholder relationship in any quasi-public institution, "can extend to the defeat of legitimate

government authority. * * * These principles control the decision of the present question. The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power * * * as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts", or shareholder relationships, "previously made between individuals or corporations is inconceivable."

Exactly the same rule applies to, and is decisive of, the present controversy, the reserve police power of the Louisiana Legislature in respect of building and loan associations as quasi-public institutions, being no less than the delegated power of Congress in reference to interstate commerce.

The United States Building and Loan League respectfully submits that this Court should affirm the judgments of the Supreme Court of Louisiana, which apply the doctrine established by this Court for the supervision and control of quasi-public institutions under the paramount police power of the state.

In closing, we cannot fail to notice that the appellants, although reiterating their displeasure with the statutory changes resulting from the 1932 Louisiana Statute, have neither controverted the fundamental propositions on which such legislation is based and justified, nor cited a single case questioning the public character of these associations and the resultant need for their complete legislative control and supervision.

It seems to us, when the appellants concede that building and loan associations, like railroads and insurance companies, are quasi-public institutions, there can be no denial of the application to those associations of the doctrine of the Mottley decision and other similar cases, under which no creditor or shareholder can stay the hand of the Legis-

lature or of Congress in the exercise of control and supervision in proper cases.

Although the matter of the regulation of building and loan associations is one strictly of intrastate business and state law, even Congress has recognized the quasi-public character of these institutions, and has specifically classified these associations with railroads, insurance and banking corporations, in exempting all these corporations, because of their public character, from the operation of the bankruptcy act (Act of Congress, February 11, 1932, C. 38, 47 Stat. Part 1, page 47.

The State of Louisiana has likewise classified these associations with other quasi-public institutions, in exempting them from the operation of its income tax law. Section 27, Act 21, 1934 (regular session) Louisiana, as amended by Section 1 of Act 21 of the Extraordinary Session of Louisiana Legislature held February 26, 1935.

It is submitted that the judgments of the Supreme Court of Louisiana in these related cases are correct, and should be affirmed by this Court.

Respectfully submitted,

C. CLINTON JAMES,
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APPENDIX

TABLE I

SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

		No. of Assns.	Total Members	Total Assets
Alabama	State..	38	28,980	$20,216,163
	Federal..	8	374	296,529
Total		46	29,354	20,512,692
Arizona	State..	2	1,550	533,119
Arkansas	State..	44	16,523	14,094,493
	Federal..	23	1,833	1,998,619
Total		67	18,356	16,093,112
California	State..	111	315,332	296,027,109
	Federal..	22	3,634	1,529,259
Total		133	318,966	297,556,368
Colorado	State..	49	47,267	38,257,475
	Federal..	16	1,953	2,134,282
Total		65	49,220	40,391,757
Connecticut	State..	44	29,997	24,380,929
	Federal..	5	326	180,388
Total		49	30,323	24,561,317
Delaware	State..	43	17,950	14,175,933
District of Columbia	State..	28	109,844	97,088,000
Florida	State..	57	9,500	9,664,703
	Federal..	36	2,929	1,460,755
Total		93	12,429	11,125,458
Georgia	State..	39	16,326	6,991,293
	Federal..	15	2,538	1,025,826
Total		54	18,864	8,017,119
Idaho	State..	12	9,550	5,302,107
	Federal..	2	1,635	477,785
Total		14	11,185	5,779,892
Illinois	State..	858	772,500	389,711,234
	Federal..	42	8,505	8,706,560
Total		900	781,005	398,417,794
Indiana	State..	376	291,320	215,780,915
	Federal..	20	2,294	1,276,074
Total		396	293,614	217,056,989
Iowa	State..	69	57,465	39,059,883
	Federal..	21	2,034	1,008,297
Total		90	59,499	40,068,180
Kansas	State..	145	131,432	91,398,664
	Federal..	12	1,192	415,852
Total		157	132,624	91,814,516
Kentucky	State..	165	162,000	106,004,054
	Federal..	17	16,834	16,751,854
Total		182	178,834	122,755,908
Louisiana	State..	96	140,802	117,155,538
	Federal..	11	4,073	9,622,979
Total		107	144,875	126,778,517
Maine	State..	36	24,248	23,473,035
Maryland	State..	950	263,000	171,250,000
	Federal..	1	481	566,665
Total		951	263,481	171,816,665
Massachusetts	State..	223	409,960	478,435,840
Michigan	State..	67	176,523	132,955,913
	Federal..	9	758	347,493
Total		76	177,281	133,303,406

TABLE I (*Continued*)

SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

		No. of Assns.	Total Members	Total Assets
Minnesota	State..	66	66,577	33,325,488
	Federal..	16	4,937	2,149,873
Total		82	71,514	35,475,361
Mississippi	State..	34	5,000	6,213,615
	Federal..	14	1,862	698,420
Total		48	6,862	6,912,035
Missouri	State..	219	175,165	149,573,559
	Federal..	23	6,507	5,360,140
Total		242	181,672	154,933,699
Montana	State..	27	24,900	12,578,957
Nebraska	State..	83	160,400	101,641,637
	Federal..	5	474	142,350
Total		88	160,874	101,783,987
Nevada	State..	5	1,300	1,010,682
New Hampshire	State..	29	16,107	13,907,592
	Federal..	1	111	167,612
Total		30	16,218	14,075,204
New Jersey	State..	1,522	793,091	1,034,011,264
New Mexico	State..	15	3,660	3,845,537
	Federal..	9	467	148,523
Total		24	4,127	3,994,060
New York	State..	270	434,637	344,619,036
	Federal..	22	19,480	19,812,170
Total		292	454,126	364,431,206
North Carolina	State..	197	72,719	60,603,002
	Federal..	4	651	451,786
Total		201	73,370	61,054,788
North Dakota	State..	22	17,583	9,964,420
	Federal..	3	121	88,835
Total		25	17,704	10,053,255
Ohio	State..	716	1,770,000	790,830,361
	Federal..	15	6,211	7,185,142
Total		731	1,776,211	798,015,503
Oklahoma	State..	86	68,400	54,731,213
	Federal..	15	10,787	17,266,649
Total		101	79,187	71,997,862
Oregon	State..	22	37,500	17,480,491
	Federal..	19	2,075	1,783,904
Total		41	39,575	19,264,395
Pennsylvania	State..	2,883	775,498	862,650,359
	Federal..	11	1,364	704,356
Total		2,894	776,862	863,354,715
Rhode Island	State..	8	44,016	32,449,964
South Carolina	State..	79	16,000	16,067,219
	Federal..	12	851	415,588
Total		91	16,851	16,482,807
South Dakota	State..	19	6,500	3,987,617
	Federal..	3	1,229	729,009
Total		22	7,729	4,716,626
Tennessee	State..	36	25,640	17,825,343
	Federal..	23	2,380	1,015,054
Total		59	28,020	18,840,397

TABLE I (*Continued*)

SUMMARY TABLE OF NUMBER OF ASSOCIATIONS, TOTAL MEMBERSHIP AND TOTAL ASSETS OF BUILDING AND LOAN ASSOCIATIONS, BY STATES, 1934

		No. of Assns.	Total Members	Total Assets
Texas	State..	130	123,908	82,886,876
	Federal..	54	4,666	3,556,150
Total		184	128,574	86,443,026
Utah	State..	20	50,400	32,784,613
	Federal..	1	35	12,401
Total		21	50,435	32,797,014
Vermont	State..	14	5,458	5,160,637
Virginia	State..	87	51,330	46,604,489
	Federal..	4	273	60,519
Total		91	51,603	46,665,008
Washington	State..	52	149,861	49,995,586
	Federal..	21	22,507	7,692,001
Total		73	172,368	57,687,587
Wisconsin.	State..	183	212,159	211,118,603
	Federal..	21	1,719	1,300,498
Total		204	213,878	212,419,101
West Virginia	State..	60	47,000	31,443,080
	Federal..	9	3,252	848,303
Total		69	50,252	32,291,383
Wyoming	State..	7	12,000	6,343,820
	Federal..	1	327	269,875
Total		8	12,327	6,613,695
Hawaii	State..	10	27,500	5,134,925
	Federal..	1	80	19,632
Total		11	27,580	5,154,557
GRAND TOTAL		10,920	8,370,146	6,450,424,392

TABLE II

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

States		Mortgage Loans Outstanding 1933	Mortgage Loans Outstanding 1934
Alabama	State..	$14,963,727	$8,892,393
	Federal..	.....	164,063
Total	.....	.....	9,056,456
Arizona	State..	420,000	257,145
Arkansas	State..	17,495,436	8,081,153
	Federal..	.....	1,415,794
Total	.....	.....	9,496,947
California	State..	232,428,452	168,458,543
	Federal..	.....	1,019,218
Total	.....	.....	169,477,761
Colorado	State..	24,906,062	22,495,000
	Federal..	.....	1,475,875
Total	.....	.....	23,970,875
Connecticut	State..	22,642,147	20,961,042
	Federal..	.....	142,682
Total	.....	.....	21,103,724
Delaware	State..	12,564,895	11,232,911
District of Columbia	State..	83,311,000	87,172,000
Florida	State..	6,006,642	3,516,068
	Federal..	.....	1,085,872
Total	.....	.....	4,601,940
Georgia	State..	5,728,427	5,592,324
	Federal..	.....	874,463
Total	.....	.....	6,466,787
Idaho	State..	4,142,535	3,366,101
	Federal..	.....	368,784
Total	.....	.....	3,734,885
Illinois	State..	310,074,000	278,379,583
	Federal..	.....	6,711,623
Total	.....	.....	285,091,206
Indiana	State..	196,713,421	147,838,857
	Federal	.....	1,068,544
Total	.....	.....	148,907,401
Iowa	State..	34,334,500	28,927,176
	Federal..	.....	792,956
Total	.....	.....	29,720,132
Kansas	State..	76,178,598	51,167,596
	Federal..	.....	290,431
Total	.....	.....	51,458,027
Kentucky	State..	100,352,563	90,494,871
	Federal..	.....	11,300,036
Total	.....	.....	101,794,907

TABLE II (*Continued*)

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

States		Mortgage Loans Outstanding 1933	Mortgage Loans Outstanding 1934
Louisiana	State..	$102,856,245	$70,224,394
	Federal..	.....	5,904,636
Total	.....	.....	76,129,030
Maine	State..	21,063,337	20,246,965
Maryland	State..	146,000,000	128,500,000
	Federal..	.....	420,830
Total	.....	.....	128,920,830
Massachusetts	State..	406,400,260	375,726,775
Michigan	State..	101,623,146	80,486,866
	Federal..	.....	218,612
Total	.....	.....	80,705,478
Minnesota	State..	30,827,410	22,852,652
	Federal..	.....	1,145,263
Total	.....	.....	23,997,915
Mississippi	State..	8,351,246	4,091,005
	Federal..	.....	566,992
Total	.....	.....	4,657,997
Missouri	State..	130,264,177	90,277,272
	Federal..	.....	3,546,171
Total	.....	.....	93,823,443
Montana	State..	12,346,115	8,960,062
Nebraska	State..	84,454,842	71,832,954
	Federal..	.....	109,193
Total	.....	.....	71,942,147
Nevada	State..	872,912	568,329
New Hampshire	State..	12,806,264	12,607,385
	Federal..	.....	159,950
Total	.....	.....	12,767,335
New Jersey	State..	798,960,365	667,813,611
New Mexico	State..	3,426,739	2,745,678
	Federal..	.....	86,171
Total	.....	.....	2,831,849
New York	State..	332,962,466	262,555,107
	Federal..	.....	14,148,442
Total	.....	.....	276,703,549
North Carolina	State..	56,285,134	47,246,203
	Federal..	.....	325,404
Total	.....	.....	47,571,607
North Dakota	State..	9,375,139	6,449,626
	Federal..	.....	58,455
Total	.....	.....	6,508,081
Ohio	State..	749,559,478	599,723,372
	Federal..	.....	5,808,921
Total	.....	.....	605,532,293
Oklahoma	State..	73,493,316	29,830,968
	Federal..	.....	9,014,824
Total	.....	.....	38,845,792

TABLE II (*Continued*)

MORTGAGE INVESTMENTS OF BUILDING AND LOAN ASSOCIATIONS 1933-1934.

States		Mortgage Loans Outstanding 1933	Mortgage Loans Outstanding 1934
Oregon	State..	$13,968,996	$12,434,405
	Federal..	.....	1,209,911
Total	.....	.....	13,644,316
Pennsylvania	State..	714,707,770	610,218,132
	Federal..	.....	500,426
Total	.....	.....	610,718,558
Rhode Island	State..	28,015,813	24,086,623
South Carolina	State..	15,950,000	11,863,873
	Federal..	.....	374,845
Total	.....	.....	12,238,718
South Dakota	State..	4,613,055	2,649,374
	Federal..	.....	513,072
Total	.....	.....	3,162,446
Tennessee	State..	13,581,171	11,163,145
	Federal..	.....	822,262
Total	.....	.....	11,985,407
Texas	State..	76,960,311	51,595,499
	Federal..	.....	2,187,899
Total	.....	.....	53,783,398
Utah	State..	14,694,201	15,383,866
	Federal..	.....	9,848
Total	.....	.....	15,393,714
Vermont	State..	4,722,729	4,489,109
Virginia	State..	44,018,097	35,308,887
	Federal..	.....	49,207
Total	.....	.....	35,358,094
Washington	State..	42,792,203	27,775,994
	Federal..	.....	5,752,043
Total	.....	.....	33,528,037
West Virginia	State..	24,304,732	21,223,487
	Federal..	.....	630,865
Total	.....	.....	21,854,352
Wisconsin	State..	186,076,388	129,765,782
	Federal..	.....	877,677
Total	.....	.....	130,643,459
Wyoming	State..	4,849,641	4,823,762
	Federal..	.....	159,924
Total	.....	.....	4,983,686
Hawaii	State..	4,213,862	3,851,857
	Federal..	.....	17,279
Total	.....	.....	3,869,136
GRAND TOTAL	.....	$5,417,659,965	$4,487,535,245

APPENDIX.

Act of Congress, February 11, 1932, chapter 38, 47 Stat. Part 1, page 47.

[PUBLIC—No. 27—72D CONGRESS]

[S. 2199]

AN ACT

Exempting building and loan associations from being adjudged bankrupts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended (U. S. C., title 11, sec. 22), is amended to read as follows:

"SEC. 4. Who may become bankrupts.—(a) Any person, except a municipal, railroad, insurance, banking corporation, or a building and loan association, shall be entitled to the benefits of this Act as a voluntary bankrupt.

"(b) Any natural person, except a wage earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation (except a municipal, railroad, insurance, or banking corporation, or a building and loan association) owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act.

"The bankruptcy of a corporation or association shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States."

Approved, February 11, 1932.